AJN

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.1651 OF 2005

Mrs. Usha Rajhans Khanna ... Petitioner

Vs.

State of Maharashtra & Ors. ... Respondents

Mr. Aspi Chinoy i/b Karim S. Vakil for the petitioner.

Mr. Khuresh Presswala with Mr. Suraj Shah i/b M/s. Mulla & Mulla for respondent 3.

CORAM: SMT. RANJANA DESAI &
ABHAY S. OKA, JJ.

DATED: 30TH NOVEMBER 2005.

P.C.:-

1. The petitioner is running a Cafe and Restaurant in the name and style of "SAMOVAR" on the ground floor in the building known as Jehangir Art Gallery in the Prince of Wales Museum compound at Fort, Mumbai (for convenience, "the said premises"). In this petition, the petitioner has challenged the notice dated 14/3/2005 issued by the Competent Authority under the Bombay Government Premises (Eviction) Act, 1955 (for short, "the said Act").

2. The case of respondent 3 as stated in its notice dated 24/7/2003 is that respondent 3 is the owner of the immoveable property known as Jehangir Art Gallery situated at Museum Compound, 161-B, Mahatma Gandhi Road, Mumbai. The said premises are situated on the ground

floor of Jehangir Art Gallery. The said premises were given on leave and licence basis to one Puran Acharya and the petitioner on 10/10/1964. The said premises were to be used as canteen to serve refreshments to the artists and patrons of the Jehangir Art Gallery. The last leave and licence agreement appears to be dated 1/5/1968. According to respondent 3, there was no subsequent leave and licence agreement, however by mutual consent the licence fee in respect of the said premises was revised and the petitioner thus continues to run the Cafe. By notice dated 24/7/2003, respondent 2 has terminated the said licence.

3. By the impugned notice issued in exercise of powers vested in him under section 5(2) of the said Act, the competent authority has called upon the petitioner to say why the petitioner should not be directed to vacate the said premises within one month from the proposed order.

4. We have heard, at considerable length, Mr. Chinoy, the learned senior counsel appearing for the petitioner. He contended that the competent authority has no jurisdiction to entertain the application made by respondent 3 as the said premises do not fall within the definition of "Government Premises" under the said Act. He submitted that since the said premises are not "Government Premises" within the meaning of the said Act, the impugned notice is ex-facie without jurisdiction and, therefore, this court can entertain the instant petition.

The learned counsel then submitted that the petitioner is not in unauthorised occupation of the said premises and, therefore, her occupation is not covered by section 4(1)(b) of the said Act. He further submitted that since no grounds are made out under section 4(1)(a) of the said Act, the impugned notice is not covered by the said provision also. On this ground also, according to the learned counsel, the impugned notice deserves to be quashed. In support of this, the learned counsel relied on the judgment of this court in **M.K. Khan v. Competent Authority, Assistant Housing Commissioner (Estate Management), Maharashtra Housing Board, BLR Vol. LXXII, 630**. In that case, this court was concerned with section 53A of the Bombay Housing Board Act, 1948. The learned counsel contended that sections 53A(1)(a) and 53A(1)(b) of the Bombay Housing Board Act, 1948 are in pari materia with section 4(1)(a) and section 4(1)(b) of the said Act. He pointed out that in that case, similar question was involved and this court held that the competent authority cannot treat the authorised occupant as an unauthorised occupant by serving a bald notice of eviction on him. This court has further held that the authorised occupant can be evicted only on the grounds mentioned in section 53A(1)(a) of the Bombay Housing Board Act, 1948. The learned counsel contended that this case is squarely covered by the said judgment. He, therefore, submitted that on this ground also, the impugned notice should be quashed.

5. We are unable to entertain this petition because the challenge is to a notice. The petitioner can raise all the contentions which he has raised in this petition in his reply to the said show cause notice before the competent authority and in case the competent authority decides against the petitioner, the petitioner can file an appeal under section 7(1) of the said Act. Inasmuch as an alternative remedy is available, the petition will have to be rejected and is rejected as such.

6. At this stage, the learned counsel for the petitioner states that the interim protection granted on 27/4/2005 may be extended by two months as the petitioner is desirous of approaching the Supreme Court. The learned counsel for respondent 3 strenuously opposes this prayer. In the circumstances of the case, the protection granted by this court on 27/4/2005 is extended by six weeks from today.

7. C. C. expedited.

(SMT. RANJANA DESAI, J.)

(ABHAY S. OKA, J.)